

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

TTAB

INSPIRATION SOFTWARE, INC.)	
)	
Opposer,)	
)	
v.)	Opposition No. 91164083
)	
TEACHER INSPIRED PRACTICAL STUFF, INC.)	
)	
Applicant.)	

Attn: Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

Sir:

**OPPOSER'S OPPOSITION TO APPLICANT'S MOTION
TO DISMISS, OR ALTERNATIVELY, FOR SUMMARY
JUDGMENT AND SUPPORTING MEMORANDUM OF LAW**

Introduction

For reasons which follow, opposer Inspiration Software, Inc. requests that the Board deny applicant's Motion to Dismiss, or Alternatively, for Summary Judgment and Supporting Memorandum of Law ("applicant's motion/memorandum"), which applicant filed and served by mail on April 12, 2006.

In applicant's motion/memorandum, it rehashes the arguments it made previously in its Motion to Dismiss. As best understood, applicant continues to believe the Board should dismiss based upon the allegations in opposer's Notice of Opposition. It now contends that the

Board should dismiss solely based upon its contention of the dissimilarity of the marks. Next, it contends that the Board should dismiss because the the INSPIRED component of its mark is laudatory, weak and frequently used in trademarks.

Opposer disagrees with applicant and urges the Board to deny its motion. As noted previously, applicant's mark T.I.P.S. - TEACHER INSPIRED PRACTICAL STUFF was identified in a published application with goods recited as "printed course materials, books, lesson plans, theme units and curriculum support materials, all featuring academic subjects, for the education of elementary school students, in International Class 16; and educational services, namely, providing learning centers featuring instruction in academic courses for elementary school students, in International Class 41." As noted in opposer's Notice of Opposition, opposer owns U.S. trademark and service mark registrations for the mark INSPIRATION. Opposer's INSPIRATION mark is used for the following goods and services: computer programs in the field of idea development through visual diagramming, outlining and text creation, in International Class 9; computer education training, in International Class 41; and computer software design for others, in International Class 42.

Opposer's market is the education market, which includes K-12, colleges, universities, and the adult education industry including corporate training and lifelong learning. Opposer also owns allowed U.S. Trademark Application Serial No. 76/075,247 for the mark INSPIRED for "computer software for use as a writing tool in education, home and business".

Opposer's use of INSPIRATION is senior to applicant's use of T.I.P.S. - TEACHER INSPIRED PRACTICAL STUFF, and Opposer's allowed intent-to-use application for

INSPIRED is senior to applicant's use of T.I.P.S. - TEACHER INSPIRED PRACTICAL STUFF.

Argument

In applicant's motion/memorandum, applicant again summarily analyzes likelihood of confusion (focusing on "appearance", "sound connotation" and "commercial impression"), and again bootstraps the merits of the opposition into its motion to dismiss argument. Opposer disagrees with applicant's approach, and urges the Board to allow the opposition to continue based upon the allegations in opposer's Notice of Opposition.

The Board noted in its March 14, 2006 Order that applicant is not arguing insufficiency of the opposer's Notice of Opposition. Accordingly, the Board stated it would treat the motion as one for summary judgment. Opposer believes that applicant has again filed a motion to dismiss and is focusing on what it believes are deficiencies with the pleadings (see, for example, pp. 3 (part II.), and 6 (part A.).

Applicant has a difficult burden because the Board must take the allegations in the Notice of Opposition as true for purposes of applicant's motion, if it is a motion to dismiss. Further, the Board must view all factual inferences in a light most favorable to opposer. *Western Worldwide Enterprises Group, Inc. v. Quinqdao Brewery*, 17 USPQ2d 1137 (TTAB 1990); *Order of Sons of Italy in America v. Profumi Fratelli Nostra AG*, 36 USPQ2d 1221 (TTAB 1995). If the Board views applicant's motion/memorandum as one for summary judgment, opposer is still entitled to have all factual inferences in a light most favorable to opposer.

Under the pertinent standard, the Board should deny applicant's motion/memorandum. As described above, opposer is a senior user of INSPIRATION and has senior rights to INSPIRED. Applicant's goods identification is broad enough to pose a trademark problem with respect to opposer's trademark/service mark rights in INSPIRATION and INSPIRED. Opposer owns prior rights in its INSPIRATION and INSPIRED marks, and applicant's T.I.P.S. - TEACHER INSPIRED PRACTICAL STUFF mark is confusingly similar to opposer's marks. Under 15 U.S.C. § 1057(b), opposer INSPIRATION registrations are *prima facie* evidence that opposer owns its marks and has the right to use them in commerce. Those registrations also carry a presumption of damage from registration of a confusingly similar mark like applicant's.

Second, with respect to the merits, opposer's INSPIRATION mark is famous within its industry, and should be entitled to a broad scope of protection. Applicant's mark is similar to opposer's registered INSPIRATION mark and identical to opposer's INSPIRED mark (the latter being the subject of opposer's allowed U.S. Trademark Application Serial No. 76/075,247 for "computer software for use as a writing tool in education, home and business"). Applicant's goods are related to opposer's goods based upon the broadly worded goods identification present in applicant's published application. In addition, for purposes of applicant's motion, that goods identification means applicant's goods are marketed similarly to opposer's since there is no market restriction in it.

Applicant has failed to prove that INSPIRATION and INSPIRED are weak and entitled to a narrow scope of protection. Unlike applicant's contentions in pp. 9-11, opposer contends

only that its mark is famous in its market. Applicant's search results for marks with INSPIRED and INSPIRATION for any goods or services misses that point completely. In addition, applicant's attempt to discredit opposer by noting oppositions of opposer's that were dismissed also misses the point. Opposer has chosen to allow certain oppositions to be dismissed in the past on confidential settlement terms that can be and are entirely consistent with the allegations opposer stated in its Notice of Opposition, as well as the contentions it has made in this Opposition Memorandum. Accordingly, applicant's use of other oppositions involving opposer is irrelevant to this opposition.

Consistent with the notice pleading principle of the Federal Rules of Civil Procedure, as adopted by the Trademark Trial and Appeal Board, opposer has alleged facts sufficient to support this proceeding. Accordingly, the Board should deny applicant's motion/memorandum if the Board treats it as a motion to dismiss.

Alternatively, if the Board treats applicant's motion/memorandum as a motion for summary judgment, the Board should deny applicant's motion because there remain genuine issues of material fact concerning at least the following likelihood of confusion factors: (i) similarity of the marks (including factual issues about sight, sound and meaning), (ii) similarity/relatedness of the goods/services, (iii) similarity of marketing channels, (iv) strength of opposer's marks, and (v) the variety of goods on which opposer's mark is used (opposer's family-of-marks argument including its INSPIRATION and INSPIRED marks).

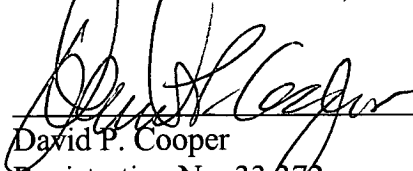
The only two bases that applicant has shown in support of a motion for summary judgment are: (i) dissimilarity of the marks based solely on applicant's attorney's analysis, and

(ii) applicant's contention that the INSPIRED component of its mark is weak. Opposer disagrees with each of these contentions. For reasons described above, taking into consideration opposer's entitlement to having all factual inferences resolved in its favor, there are certainly genuine issues of material fact. Accordingly, the Board should deny applicant's motion/memorandum.

Dated: May 17, 2006.

Respectfully submitted,

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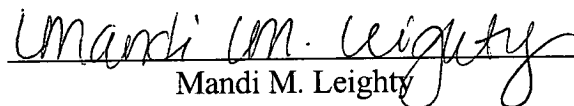
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CERTIFICATE OF MAILING

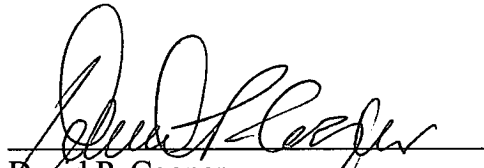
I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Attn: Trademark Trial and Appeal Board, U.S. Patent and Trademark Office, P.O. Box 1451, Alexandria, VA 22313-1451 on May 17, 2006.



Mandi M. Leighty

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing OPPOSER'S OPPOSITION TO APPLICANT'S MOTION TO DISMISS, OR ALTERNATIVELY, FOR SUMMARY JUDGMENT AND SUPPORTING MEMORANDUM OF LAW was served on applicant, by service on its attorney, Kevin P. Jacobs of Herron Jacobs Ortiz located at 1401 Brickell Avenue, Suite 825, Miami, Florida 33131 by mailing same as first class mail, postage prepaid, to the aforementioned address on May 17, 2006.


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